STATE OF MICHIGAN

COURT OF APPEALS

KEN MEHL, KESCO, INC., and BLARNEY BAY PUB LAND, L.L.C.,

Plaintiffs-Appellants,

v

FIFTH THIRD BANK and ALBERT DEFLAVIIS, a/k/a AL DEFLAVIIS,

Defendants-Appellees.

UNPUBLISHED
December 11, 2008

No. 278977
Wayne Circuit Court
LC No. 05-524983-CZ

Before: Borrello, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Plaintiffs, Ken Mehl, the sole shareholder of plaintiff Kesco, Inc., and sole member of plaintiff Blarney Bay Pub, L.L.C., filed an action against defendants Fifth Third Bank and its employee and agent, Albert DeFlaviis, alleging various claims in connection with plaintiffs' sale of the Blarney Bay Pub to Ronald Kudek in 2003. The parties subsequently stipulated to submit their dispute to binding arbitration. Following an arbitration hearing, the arbitrator issued an award in which he found no cause of action with respect to each of plaintiffs' claims. The circuit court subsequently denied plaintiffs' motion to vacate the arbitration award and granted defendants' motion to confirm the award. Plaintiffs appeal as of right. We affirm.

Plaintiffs argue that the arbitration award should be vacated because the arbitrator exceeded his authority by ignoring evidence and failing to issue a reasoned award. We disagree.

A court's power to modify, correct, or vacate an arbitration award is limited. MCR 3.602(J)(2)(c) provides that an arbitration award may be vacated if "the arbitrator exceeded his or her powers." This Court reviews de novo a circuit court's decision whether to confirm, vacate, or modify an arbitration award. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004).

Arbitrators exceed their powers "whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law." *Dohanyos v Detrex Corp* (*After Remand*), 217 Mich App 171, 176; 550 NW2d 608 (1996). "[A]n allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that this claim is not used as a ruse to induce the court to review the merits of the arbitrators' decision." *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438

Mich 488, 497; 475 NW2d 704 (1991). "Stated otherwise, courts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrators' power in some way." *Id.* Further, "[t]he character or seriousness of an error of law which will invite judicial action to vacate an arbitration award . . . must be error so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise." *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982).

We reject plaintiffs' argument that the arbitrator exceeded his authority because the arbitration award did not contain more detailed findings of fact and conclusions of law setting forth the arbitrator's factual and legal reasoning. The authority on which plaintiffs rely, MCR 2.517(A)(1), MCL 418.847(2), *Woody v Cello-Foil Products* (*After Remand*), 450 Mich 588; 546 NW2d 226 (1996), and *Powell v Collias*, 59 Mich App 709; 229 NW2d 897 (1975), does not apply to arbitration proceedings. It is well settled that "[i]n an arbitration proceeding, there is no requirement of a verbatim record, formal findings of fact or conclusions of law, and the arbitrator's findings of fact are unreviewable." *DAIIE, supra* at 429. As explained in *DAIIE*:

> Arbitration by its very nature, restricts meaningful legal review in the traditional sense. As a general observation, courts will be reluctant to modify or vacate an award because of the difficulty or impossibility, without speculation, of determining what caused an arbitrator to rule as he did. The informal and sometimes unorthodox procedures of the arbitration hearings, combined with the absence of a verbatim record and formal findings of fact and conclusions of law, make it virtually impossible to discern the mental path leading to an award. Reviewing courts are usually left without a plainly recognizable basis for finding substantial legal error. It is only the kind of legal error that is evidence without scrutiny of intermediate mental indicia which remains reviewable, such as that involved in these cases. In many cases the arbitrator's alleged error will be as equally attributable to alleged "unwarranted" factfinding as to asserted "error of law." In such cases the award should be upheld since the alleged error of law cannot be shown with the requisite certainty to have been the essential basis for the challenged award and the arbitrator's findings of fact are unreviewable. [*Id.*]

Although the parties' stipulation referring the case to arbitration required the arbitrator to issue a "reasoned award," formal findings of fact and conclusions of law were not required. The face of the arbitration award sufficiently explains the basis for the arbitrator's decision and reasoning. The arbitrator explained that the case came down to credibility and that plaintiffs' evidence was insufficient to meet the agreed on clear and convincing standard of proof. The arbitrator's credibility determinations constitute findings of fact that are not subject to challenge on appeal.

Additionally, the arbitration award, on its face, does not support plaintiffs' argument that the arbitrator failed to consider evidence. On the contrary, the arbitrator indicated that he considered all testimony, exhibits, and post-hearing submissions. The degree of consideration that the arbitrator gave the evidence is not a matter for appellate review. *Belen v Allstate Ins Co*, 173 Mich App 641, 646; 434 NW2d 203 (1988). Similarly plaintiffs' attempts to establish that they presented factual support for their claims, and that the arbitrator's decision is not supported by a rational view of the evidence, relate to the factual merits of the arbitrator's decision, which

may not be challenged on appeal. This Court does not review arbitration awards "on the basis that the award was against the great weight of the evidence or that it was not supported by substantial evidence." *Id.* at 645. Plaintiffs have not identified an error of law that is apparent from the face of the arbitration award.

Thus, plaintiffs failed to establish that the arbitrator committed a material error of law or exceeded his authority.

Plaintiffs also argue that the arbitrator's award should be vacated under MCR 3.602(J)(2)(a), (b), or (d), which provide that an award may be vacated if it was procured by corruption, fraud, or other undue means, the arbitrator was partial, or because of an irregularity in the arbitration proceeding. However, plaintiffs have not provided support for any of these claims. Evidence of partiality must be certain and direct, and not remote, uncertain or speculative. *Belen*, *supra* at 645. Here, plaintiffs simply argue that the evidence factually supported their claims and, accordingly, there can be no other explanation for the arbitrator's decision other than that the arbitrator either was biased or partial, ignored evidence, or that the award was procured by undue means. Plaintiffs' arguments are nothing more than a disguised attempt to challenge the factual basis for the arbitrator's decision. Plaintiffs have not established any basis for vacating the arbitrator's award under MCR 3.602(J)(2)(a), (b), or (d).

For these reasons, the circuit court did not err in denying plaintiffs' motion to vacate the arbitration award and in granting defendants' motion to confirm the award.

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher